Supreme Court, U.S.
FILED

No. 99 946 JUN 11 1999

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In The
Supreme Court of the United States

PARNEET S. SOHI, D.D.S.
Petitioner,

v.

OHIO STATE DENTAL BOARD
Respondent.

Petition For A Writ Of Certiorari To The Court of Appeals of Hamilton County, Ohio, First Appellate District

PETITION FOR WRIT OF CERTIORARI
with Appendix

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QUESTIONS PRESENTED

1. Whether a state agency may impose professional discipline, by incorporating the denominated guidelines of a professional society, in the absence of statutory adoption of those guidelines, statutory delegation and exercise of administrative authority to adopt those guidelines, or other, foregoing, legal recognition of them.

2. Whether evidence is necessarily insufficient in an administrative adjudication for professional discipline, where charges are brought regarding more than one patient; the evidence unequivocally shows that no professional misconduct as charged could have occurred regarding one certain patient; and, the administrative adjudication as regarding other patients is reversed and yet the matter as regarding the remaining patient is remanded to the administrative agency for further proceedings.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
TABLE OF AUTHORITIES iii
OPINIONS BELOW 1
JURISDICTION 2
STATEMENT 2
A. The Ohio State Dental Board's Charges against Dr. Sohi 2
B. Proceedings Below 2
REASONS FOR GRANTING THE PETITION 5

I. The Court of Appeals of Hamilton County, Ohio, in construing the applicable Ohio law to incorporate the Guidelines for Behavioral Management of the American Academy of Pediatric Dentistry, but in lieu of any substantive provision in Ohio law and the Guidelines' expressed unsuitability as substantive rules, violated fundamental fairness and otherwise violated due process under the Fifth and Fourteenth Amendments to the Constitution.. 5

I. The adjudication by the Court of Appeals of Hamilton County, Ohio, confining the case to a patient who did not in fact visit Dr. Sohi during the period in issue, but remanding the case to the trial court and thence to the Ohio State Dental Board for reconsideration of the sanction against Dr.

Sohi with respect to that patient,
necessarily and clearly manifests error. 14

CONCLUSION 20

APPENDICES . . . . . see index following conclusion

Apdx. A Ohio State Dental Board Decision
Apdx. B Ohio Common Pleas Magistrate Decision
Apdx. C Ohio Common Pleas Mag. Decision Objections
Apdx. D Ohio Dist. Court Judgment
Apdx. E Ohio Supreme Court Entry
Apdx. F Ohio Common Pleas Order

TABLE OF AUTHORITIES

Supreme Court Cases

De Yonge v. Oregon, 299 U.S. 353 (1937) 18

Gentile v. State Bar of Nevada,
501 U.S. 1030 (1991) 11, 13, 14

Grayned v. City of Rockford,
408 U.S. 104 (1972) 11

Mobil Oil Corp. v. FPC,
417 U.S. 283, 292 (1974) 18

Pacific Mut. Life Ins. Co. v. Haslip,
499 U.S. 1 (1991) (O'CONNOR, J., dissenting) 11

Thompson v. City of Louisville,
362 U.S. 199 (1960) 18

Yick Wo v. Hopkins, 118 U.S. 356 (1886) 18

Zauderer v. Office of Disciplinary Counsel,
471 U.S. 626 (1985) 11

Federal Circuit Cases

McKeesport Hospital v. Accreditation Council
for Graduate Medical Education,
24 F.3d 519 (3rd Cir. 1994) 12

Robinson v. U.S., 718 F.2d 336 (10th Cir. 1983) 12

State Case

Johnson v. Board of Govs. of Reg. Dentists,
913 P.2d 1339 (Okla. 1996) 12, 13

United States Code

28 U.S.C. § 1257 2

Ohio Revised Code

O.R.C. Ch. 119 6

O.R.C. Ch. 4715 6

O.R.C. § 4715.03 . . . . . 6, 10

O.R.C. § 4715.30 . . . . . 6, 10, 11, 13

Ohio Administrative Code

O.A.C. 4715-15-01 7

Secondary Authorities

American Academy of Pediatric Dentistry,
Guidelines for Behavioral Management . . . . . *passim*

Stern, Gressman, Shapiro & Geller,
SUPREME COURT PRACTICE § 4.14 at 190
(7th ed.; BNA, 1993) 18

IN THE SUPREME COURT OF THE UNITED STATES

PARNEET S. SOHI, D.D.S, ***Petitioner,***

v.

OHIO STATE DENTAL BOARD, ***Respondent.***

Petition for a Writ of Certiorari to the Court of Appeals of Hamilton County, Ohio, First Appellate District

---

Parneet S. Sohi, D.D.S., respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Hamilton County, Ohio, First Appellate District, in this case.

OPINIONS BELOW

All of the opinions below are unreported. The order by the Ohio State Dental Board, In the Matter of Parneet S. Sohi, D.D.S. (no case number) (October 17, 1996), appears in Appendix A.

The affirmances by the magistrate and by the Hamilton County, Ohio, Court of Common Pleas, Parneet S. Sohi, D.D.S. v. Ohio State Dental Board, No. A9605966 (Hamilton Co., Ohio, C.P.) (June 10 & Aug. 26, 1997), appear in Appendices B and C. The judgment entry and

opinion by the Hamilton County, Ohio, Court of Appeals, First Judicial District, Parneet S. Sohi, D.D.S. v. Ohio State Dental Board, No. C-970739 (Oct. 23, 1998), appear in Appendix D.

The entry by the Supreme Court of Ohio, declining jurisdiction over Dr. Sohi's discretionary appeal, Parneet S. Sohi, D.D.S. v. Ohio State Dental Board, No. 98-2573 (Mar. 3, 1999), appears in Appendix E. Finally, the order by the Court of Common Pleas of Hamilton County, Ohio, remanding Dr. Sohi's case to the Dental Board, appears in Appendix F.

JURISDICTION

The Supreme Court of Ohio entered its dismissal of Dr. Sohi's appeal on March 3, 1999 (App. E, *infra*). Dr. Sohi invokes the jurisdiction of this Court under 28 U.S.C. Section 1257.

STATEMENT

A. The Ohio State Dental Board's Charges against Dr. Sohi

The Ohio State Dental Board issued to the petitioner, Parneet S. Sohi, D.D.S., M.S., on December 4, 1995, a notice of opportunity for hearing, on charges involving professional discipline and in the bare form prescribed by statute. The notice stated, in pertinent part:

> Between the dates of November, 1994, and March, 1995, you have mistreated and

> abused children in your practice by: grabbing them by the throat and choking; placing anesthetic needle between the patient's eyes and threatening them; holding them up and shaking them; and placing children in headlocks, and other verbal and/or physical abuse against children.

Dr. Sohi continues vehemently to deny that he ever engaged in any such conduct. Dr. Sohi remains an eminently qualified pediatric dentist. He has received national, professional recognition for his efforts to protect children from abuse. The Dental Board's investigation and prosecution of Dr. Sohi proceed from accusations by Dr. Sohi's vengeful former employees.

B. Proceedings Below

The Dental Board conducted a hearing, before a hearing examiner, on July 18, 19, and 22, 1996, and the hearing examiner issued his report and recommendation on September 13, 1996. The Dental Board then reviewed the hearing examiner's recommendation, and, on October 17, 1996, issued its order suspending Dr. Sohi's license for six months with conditions for reinstatement, and imposing probation for five years thereafter.

Dr. Sohi appealed to the Hamilton County, Ohio, Court of Common Pleas, in accordance with statute. On June 10 and August 26, 1997, a magistrate and then the court affirmed the Dental Board's order.

Dr. Sohi appealed then to the Hamilton County, Ohio, Court of Appeals. The court of appeals entered judgment, on October 23, 1998, reversing and remanding in part, but affirming in part. Crucially, the court of appeals affirmed with respect to a child identified in the record as Patient No. 1, reversed with respect to those other patients on whose facts the Dental Board had imposed discipline, and remanded to the Dental Board by way of the court of common pleas for any reconsideration of the proper discipline. Dr. Sohi applied for reconsideration in the court of appeals, on November 5, 1998, and for certification to the Ohio supreme court of a conflict with an Ohio court of appeals of another district. The court of appeals overruled both motions on January 22, 1999.

Dr. Sohi also appealed to the Ohio supreme court, for discretionary review, on December 4, 1998. The supreme court, on March 3, 1999, declined jurisdiction, and dismissed the appeal. (Dr. Sohi, in the meantime on February 3, 1999, had moved in the court of appeals, *pro se*, for clarification of the court of appeals' order of January 22, 1999. The Dental Board moved to strike, which the court of appeals granted on February 26, 1999. Dr. Sohi then moved in the court of appeals, *pro se*, on March 26, 1999, for leave to file objections to the court of appeals' order striking his motion for clarification. The court of appeals overruled this motion, by its order of April 23, 1999, stating that it had lost jurisdiction and that the motion for leave was not comprehended by the applicable rules.)

Dr. Sohi therefore takes his last recourse, to this Court.

REASONS FOR GRANTING THE PETITION

I. The Court of Appeals of Hamilton County, Ohio, in construing the applicable Ohio law to incorporate the Guidelines for Behavioral Management of the American Academy of Pediatric Dentistry, but in lieu of any substantive provision in Ohio law and the Guidelines' expressed unsuitability as substantive rules, violated fundamental fairness and otherwise violated due process under the Fifth and Fourteenth Amendments to the Constitution.

The Ohio State Dental Board enjoys its authority under Chapter 4715, Ohio Revised Code. The salient provisions appear in Sections 4715.03 and 4715.30. Section 4715.03, more generally on the disciplinary authority of the Dental Board, provides in pertinent part:

> (C) The board shall adopt rules establishing standards for the safe practice of dentistry and dental hygiene by qualified practitioners and shall, through its policies and activities, promote such practice.
>
> (D) The board shall administer and enforce the provisions of this chapter. The board shall investigate evidence which appears to show that any person has violated

> any provision of this chapter. * * * If after investigation the board determines that there are reasonable grounds to believe that a violation of this chapter has occurred, the board shall conduct disciplinary proceedings pursuant to Chapter 119. of the Revised Code.

O.R.C. § 4715.03(C) & (D). (Ohio Revised Code Chapter 119, in the cross-reference in Section 4715.03(D), contains the local administrative procedure act.)

Section 4715.30, more specifically on the grounds for discipline, provides in any conceivably pertinent part:

> (A) The holder of a certificate or license issued under this chapter is subject to disciplinary action by the state dental board for any of the following reasons:
>
> * * *
>
> (2) Obtaining or attempting to obtain money or anything of value by intentional misrepresentation or material deception in the course of practice;
>
> * * *
>
> (5) Engaging in lewd or immoral conduct in connection with the provision of dental services;
>
> * * *

(7) Providing or allowing dental hygienists or other practitioners of auxiliary dental occupations working under his supervision, or a dentist holding a temporary limited continuing education license under division (C) of section 4715.16 of the Revised Code working under his direct supervision, to provide dental care that departs from or fails to conform to accepted standards for the profession, whether or not injury to a patient results;

(8) Inability to practice under accepted standards of the profession because of physical or mental disability, dependence on alcohol or other drugs, or excessive use of alcohol or other drugs; [and,]

(9) Violation of any provision of this chapter or any rule adopted thereunder[.]

O.R.C. § 4715.30(A). Neither any other part of Chapter 4715, Ohio Revised Code, nor, for all that appears, any other part of the Ohio statutes, makes any provision regarding such misconduct as charged against Dr. Sohi.

Further, the Dental Board has withheld exercise of its authority, *see* O.R.C. § 4715.03(C), to promulgate any administrative regulations, in the Ohio Administrative Code, substantively treating of professional conduct, much less treating of the misconduct charged against Dr. Sohi. The administrative rules codified in Chapter 4715-15 and

entitled "Enforcement," provide simply, reflexively, and in full:

> Dentists and other licensees governed by Chapter 4715, Ohio Revised Code, and by these rules, shall be disciplined in accordance with Chapters 4715 and 119, Ohio Revised Code, for violation of these rules.

O.A.C. 4715-15-01.

The Dental Board, in bringing charges against Dr. Sohi, identified in its notice of opportunity for hearing only Section 4715.30(A)(7). That provision refers only to one's subordinate, and to one's insufficient supervision of him, such that the subordinate "departs from or fails to conform to accepted standards for the profession * * * ." Section 4715.30(A)(8), instead, refers to the same "accepted standards of the profession" with respect to practice by a dentist himself, but only in its stated context of drug abuse or other disability. At best, at the outset, the Dental Board charged Dr. Sohi according to generic, unstated, and inferential notions of professional conduct. Then, in its hearing on misconduct as charged, the Dental Board presented and received evidence that Dr. Sohi committed misconduct in his use of certain techniques, in view of a certain, five-page excerpt from the publication, Guidelines for Behavioral Management, of the American Academy of Pediatric Dentistry (AAPD). But the Dental Board denied Dr. Sohi fair notice of its substantive reliance on the AAPD

guidelines, and therefore denied him due process regarding the guidelines, in three successive ways.

First, to repeat, the Dental Board never has incorporated or otherwise adopted the AAPD guidelines as any measure of "accepted standards for the profession," O.R.C. § 4715.30(A)(7), beyond the Dental Board's employment of the guidelines in its proofs in Dr. Sohi's case. Neither Section 4715.30(A)(7) nor (8), nor any other provision in the Ohio Revised Code, nor any provision in the Ohio Administrative Code, of course, adopts or otherwise identifies the American Academy of Pediatric Dentistry or any of its pronouncements. Not in the statutory notice of opportunity for hearing, and not in any bill of particulars (which Dr. Sohi sought but which the Dental Board refused), but only in the record of the Dental Board's evidentiary hearing on Dr. Sohi's case, does the AAPD or its guidelines appear.

Second, the Dental Board, notwithstanding its reference to the AAPD guidelines in Dr. Sohi's case, failed to put on any proofs regarding the AAPD, or its guidelines, as commanding such stature as accepted proponents or standards of the dental profession. Similarly, there seems to have occurred no judicial notice, in any of the ensuing appeals in the Ohio courts, that the AAPD or its guidelines deserve such status. Dr. Sohi maintains his own membership in the AAPD. The Dental Board, particularly in the ensuing litigation, has sought to impute from Dr. Sohi's membership in the AAPD his knowledge of and

agreement with the AAPD guidelines, for the very purposes of his professional-disciplinary case. Yet Dr. Sohi never has conceded that the AAPD guidelines constituted any generally accepted standard of professional conduct, for any purpose of professional discipline in his case.

And, third, the AAPD guidelines constitute just that, guidelines, nominally and substantively. Dr. Sohi's lack of concession on the AAPD guidelines is well founded. The AAPD guidelines, as placed by the Dental Board in evidence in Dr. Sohi's case (and in close paraphrase here), speak of behavior management methods that the AAPD would deem useful in pediatric dentistry. The AAPD, according to the Dental Board's own evidence, conceives of its guidelines as meaning to suggest techniques and other assistance, but as avoiding any set standard for professional practice. For the semantics, the AAPD guidelines expressly distinguish between themselves, and standards proper. Dr. Sohi's case was tried before a hearing examiner, who rendered a report and recommendation, in accordance with statute. The report and recommendation most unfortunately included, however, a finding of fact that both the Dental Board's expert witness, and Dr. Sohi, considered the AAPD guidelines to constitute accepted standards for dentistry. Dr. Sohi rejects any such approach to waiver, and disputes this characterization, for its misunderstanding of the AAPD guidelines themselves and the context of his testimony.

Due process, then, regarding the Dental Board's irregular, belated, and specious reliance on the AAPD guidelines, must require more than that.

This Court appears not to have held on this point, of the manner and efficacy of inference of standards for professional discipline by an administrative agency, from general expressions of guidelines or standards from professional societies or other organizations not characterized with any quasi-governmental status. Yet, a vague rule or standard for professional discipline, the same as other legislation invalid under due process, "offends the Constitution because it fails to give fair notice to those it is intended to deter and creates the possibility of discriminatory enforcement." Gentile v. State Bar of Nevada, 501 U.S. 1030, 1082 (1991) (O'CONNOR, J., concurring) (citing to Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 42 (1991) (O'CONNOR, J., dissenting)). *See generally* Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 654-55 (1985); *cf.* Gentile, 501 U.S. at 1038 (construing Nev. S. Ct. R. 177; regarding standard of "substantial likelihood of materially prejudicing" adjudication, and observing, "Neither the disciplinary board nor the reviewing court explains any sense in which petitioner's statements had a substantial likelihood of causing material prejudice."); Grayned v. City of Rockford, 408 U.S. 104, 108, 112 (1972) (construing anti-noise ordinance in light of challenge as void for vagueness).

The issue ought to remain clear. Due process, in professional discipline as in other regulatory contexts, requires reasonably specific, adequate notice, of the rules or standards to which one will be held. The Dental Board's practice in Dr. Sohi's case, in lieu of any particular exercise of the Dental Board's rulemaking authority under Revised Code Sections 4715.03, failed to apprise Dr. Sohi reasonably and fairly of the standards to which the Dental Board would hold him. The Dental Board's practice in Dr. Sohi's case, moreover in lieu of any demonstration of "accepted standards of the profession," under Ohio Revised Code Section 4715.30 (and in lieu even of any epistemology of standards, as though professional standards were uniform and self-evident), failed to apprise him. *Cf., e.g.,* McKeesport Hospital v. Accreditation Council for Graduate Medical Education, 24 F.3d 519 (3rd Cir. 1994) (involving 42 U.S.C. § 1983 action against Accreditation Council for Graduate Medical Education, and exemplifying promulgation of standards consistently with due process; holding, however, on lack of state action); Johnson v. Board of Govs. of Reg. Dentists, 913 P.2d 1339, 1347 (Okla. 1996) (authorizing board's discretion in imposing sanctions once violation would be found, but still requiring that "the discipline is not arbitrary or capricious, within the law, and supported by the facts;" citing to Robinson v. U.S., 718 F.2d 336 (10th Cir. 1983)).

The Dental Board expressly pursued the AAPD guidelines, and effectively enough equated them to a

constitutionally sufficient standard. But the Dental Board incorporated the AAPD guidelines, without having legitimized the AAPD as the proponent of professional dental regulation in Ohio; or, if not, then by contradicting the AAPD's own distinction between its guidelines and proper, substantive rules; and, in any event, only after the fact of the prosecution against Dr. Sohi. Compared, say, to the situation underlying this Court's holding in Gentile, *supra,* the Dental Board's prosecution of Dr. Sohi cannot stand. In Gentile, the Nevada Supreme Court had promulgated its Rule 177. Here, the Dental Board referred to the AAPD, in its guidelines, without as much as any formal delegation of authority. In Gentile, Rule 177 implicated expressly one's "substantial likelihood of materially prejudicing" an adjudication by making comments outside of the courtroom. Here, the Dental Board referred to the AAPD guidelines that denied their own status as, and distinguished themselves from, proper standards. The Oklahoma supreme court, in Johnson, *supra,* acknowledged that statute there did not "requir[e] the Board to establish guidelines before imposing discipline on a licensed dentist," but the charge there involved the permission of unauthorized practice of dentistry by assistants, implicitly and presumably enough in violation of the court's understanding of statute or administrative rule. And, again, the Dental Board's invocation of even so unintended and deficient a legal standard as the AAPD guidelines occurred after the fact. This differs from

Gentile, Johnson, or any other constitutionally valid approach.

II. The adjudication by the Court of Appeals of Hamilton County, Ohio, confining the case to a patient who did not in fact visit Dr. Sohi during the period in issue, but remanding the case to the trial court and thence to the Ohio State Dental Board for reconsideration of the sanction against Dr. Sohi with respect to that patient, necessarily and clearly manifests error.

The Dental Board's proofs against Dr. Sohi, regarding Patient No. 1, included testimony from two of Dr. Sohi's former employees, Ms. Mary Morgan and Ms. Victoria Bartlett. Ms. Morgan testified that she saw Dr. Sohi hold Patient No. 1 against a wall in his office, and shake him. Ms. Bartlett testified that she heard a noise from Dr. Sohi's office apart from her station, and that Ms. Morgan later reported to her the incident involving Patient No. 1. The hearing examiner relied expressly and exclusively on Ms. Morgan's and Ms. Bartlett's testimony, in his findings of fact on Dr. Sohi's alleged mistreatment of Patient No. 1.

Thus, the report and recommendation stated:

> Mary Morgan and Victoria Bartlett gave very credible testimony concerning Dr. Sohi's treatment of Patient No. 1. From the testimony it appears that Patient No. 1 was being examined by Dr. Sohi, and was

> screaming, while in the "quiet room," or operatory number two. From her place in the dental office, Bartlett heard a "thud," coming from the wall of the operatory, and at the same time Morgan entered the operatory through a closed door, finding Dr. Sohi having raised Patient No. 1 up, holding him against the wall and shaking him. Dr. Sohi denies this took place, but stated instead that the child was either being treated or examined, that both parents were present, and neither objected to his treatment of the child. * * * There is no set of circumstances whereby the conduct observed by Mary Morgan with respect to the treatment of Patient No. 1 could be within the acceptable standards for this profession.

In the Matter of Parneet S. Sohi, D.D.S., Report and Recommendation ¶ 13 at 45 (Ohio St. Dental Bd., Sept. 13, 1996).

But there exists, as well, "no set of circumstances" whereby Ms. Morgan could have witnessed anything with respect to Patient No. 1. Dr. Sohi treated Patient No. 1 seven times, on August 13, September 1, September 6, October 26, and November 24, 1994, and June 17 and 24, 1995. Ms. Morgan worked in Dr. Sohi's office from January to March 1995, only during the interim of Patient No. 1's visits in 1994 and then in 1995. This is as Dr. Sohi

demonstrated first to the Dental Board's counsel in advance of hearing, and then to the Dental Board. Dr. Sohi conveyed to the Dental Board, first in his counsel's correspondence with the Dental Board's counsel and then in a separate submission of that correspondence, his salient office records regarding treatment and employment. Neither Ms. Morgan nor Ms. Bartlett could have witnessed any of Dr. Sohi's behavior, good or bad, with respect to Patient No. 1.

Ms. Bartlett, as the hearing examiner correctly understood, received her information from Ms. Morgan, or in conjunction with such of Ms. Morgan's asserted observations that actually occurred. Ms. Morgan not possibly having been in Dr. Sohi's employ and hence not in his office, at any time at which Patient No. 1 visited there, her communications to Ms. Bartlett, and Ms. Bartlett's accompanying perceptions, must at best have concerned some person or event not involving Patient No. 1. The Dental Board noticed none of this, or ignored all of it.

Another of Dr. Sohi's former employees, Ms. Kimberly Bradshaw, testified also for the Dental Board. The uncontested evidence showed that Ms. Bradshaw worked for Dr. Sohi from November 1994 to January 1995, that is, during at least one of the months in which Patient No. 1 visited Dr. Sohi's office. Ms. Bradshaw appears not, however, to have provided any testimony or other evidence regarding Patient No. 1, but only regarding other patients or matters.

Dr. Sohi supplemented the testimony with an affidavit by Patient No. 1's parents, which surely contradicted the testimony of Ms. Morgan and Ms. Bartlett and supported Dr. Sohi. The affidavit stated:

AFFIDAVIT

NOW COME JOHN GIBSON AND MILDRED GIBSON WHO HEREBY SWEAR TO AND AFFIRM THE FOLLOWING:

1. We are the parents of [Patient No. 1], whose birthday is 6-23-92.

2. Dr. Parneet Sohi has been [Patient No. 1's] dentist since approximately August of 1994.

3. Every time we have taken [Patient No. 1] to Dr. Sohi's dental office at least one of us has been physically present with [Patient No. 1] during the entire appointment.

4. At no time during any appointment did we observe Dr. Sohi pick up [Patient No. 1], hold him against the wall and shake him.

FURTHER AFFIANTS SAYETH NAUGHT.

There followed the affiants' execution and the notarization.

As stated, Dr. Sohi already has secured review of his administrative adjudication in the Ohio courts, again according to statute. Such review, thus far, has

resulted in a partial reversal of the Dental Board's adjudication with respect to all patients except for Patient No. 1, and a remand to the Dental Board for reconsideration of sanction in view of Patient No. 1 alone. But, all of the Dental Board's evidence, such as it was, went to those other patients, not Patient No. 1. The Dental Board lacked any possibility of credible or probative evidence from Ms. Morgan or Ms. Bartlett. And, in contradiction to Ms. Morgan and Ms. Bartlett, Dr. Sohi confronted the Dental Board with the affidavit of Patient No. 1's parents.

Where an adjudication would proceed despite the absence of any evidence whatsoever, much less whatever quantum of evidence an applicable standard would prescribe, the adjudication must offend due process. And, where this Court otherwise would grant certiorari, namely on Dr. Sohi's first issue of the illegitimate incorporation of the AAPD guidelines, it might well comprehend in the grant of certiorari the administrative adjudication and the intermediate appellate review of it, under a standard of substantiality or other sufficiency of evidence. *See, e.g.,* Mobil Oil Corp. v. FPC, 417 U.S. 283, 292 (1974); *see generally* Stern, Gressman, Shapiro & Geller, SUPREME COURT PRACTICE § 4.14 at 190 (7th ed.; BNA, 1993) (citing to Thompson v. City of Louisville, 362 U.S. 199 (1960)).

> Just as "Conviction upon a charge not made would be sheer denial of due process," so is it a violation of due process to convict and punish a man without evidence of his guilt.

Thompson v. Louisville, *supra,* 362 U.S. at 206 (notes omitted; quoting De Yonge v. Oregon, 299 U.S. 353, 362 (1937), and citing, *inter alia*, to Yick Wo v. Hopkins, 118 U.S. 356 (1886)).

The Dental Board would impose profes-sional discipline against Dr. Sohi, according not only to the improper standard of the AAPD guidelines, but according to evidence that could not possibly pertain to Patient No. 1. But only Patient No. 1 remains available for the Dental Board's consideration, on remand, after Dr. Sohi's partial victory in his intermediate appellate review.

CONCLUSION

WHEREFORE, the Petitioner, Parneet S. Sohi, D.D.S., respectfully prays that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

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Table of Appendix Contents

Ohio State Dental Board,
ORDER,
filed 10/17/96 . . . . . A1-A5

Court of Common Pleas
Hamilton County, Ohio,
MAGISTRATE'S DECISION,
filed 6/10/97 . . . . . B1-10

Court of Common Pleas
Hamilton County, Ohio,
DECISION REGARDING APPELLANT'S OBJECTIONS TO MAGISTRATE'S DECISION,
filed 8/26/97 . . . . . C1-C7

Court of Appeals,
First Appellate District of Ohio,
Hamilton County, Ohio,
JUDGMENT ENTRY,
filed 10/23/98 . . . . . D1-D21

The Supreme Court of Ohio,
ENTRY,
filed 3/23/99 . . . . . E1-E1

Court of Common Pleas,
Hamilton County Ohio,
ORDER,
filed 5/20/99 . . . . . F1-F1

BEFORE THE OHIO STATE DENTAL BOARD

In Re: The Suitability of Paneet S. Sohi, D.D.S.,)
to Retain his License to Practice Dentistry)
in the State of Ohio.)

This matter came on for consideration before the Ohio State Dental Board on the 16th of October, 1996.

Respondent, Paneet S. Sohi, D.D.S., was duly notified of an Opportunity for Hearing, In accordance with Ohio Revised Code Chapter 119, by Certified U.S. Mail, dated December 4, 1995. Respondent requested a hearing and an administrative hearing was held by and before Christopher B. McNeil, Esq., the Hearing Examiner appointed by the Ohio State Dental Board to hear this matter.

The administrative hearing was held on July 18, 19, and 21, 1996.

The Hearing Examiner filed his Report and Recommendation outlining the findings of fact, conclusions of law, and recommendation in this matter on September 13, 1996.

Ohio State
Dental Board
Filed 10/17/96

The Hearing Examiner filed his Report and Recommendation outlining the findings of fact, conclusions of law, and recommendation in this matter on September 13, 1996.

Objections to the Report and Recommendation were filed by Dr. Sohi on September 26, 1996. The State filed a Motion to Strike on october 4, 1996, and Dr. Sohi filed a response to that motion on October 11, 1996. The State filed a reply to the response on October 15, 1996, and Dr. Sohi filed a sur-reply on October 16, 1996. Dr. Sohi also filed a Motion to Dismiss on October 11, 1996.

The Ohio State Dental Board reviewed and considered the transcript of the proceedings, the Report and Recommendation, the objections and all posthearing motions and pleadings filed in this matter.

The Ohio State Dental Board modified the recommendation of the Hearing Examiner in this matter.

ADJUDICATION ORDER

Upon the Report and Recommendation of the Hearing Examiner in this matter, a true copy of which is attached hereto and Incorporated herein, and upon the modification, approval and confirmation by vote of the Ohio State Dental Board on the above date, the following

ORDER is hereby entered on the Journal of the Ohio State Dental Board.

It is hereby ORDERED that:

1. The license of Paneet S. Sohi, D.D.S., to practice dentistry in the state of Ohio shall be SUSPENDED for a period of six (6) months.

2. The Board shall not consider reinstatement of Dr. Sohi's license to practice dentistry unless and until he has provided documentation, satisfactory to the Board, that he has received a mental health evaluation and treatment, if necessary, from a treatment provider approved in advance by the Board Secretary.

3. Upon reinstatement, Dr. Sohi's license shall be subject to the following PROBATIONARY terms, conditions and limitations for a period of five (5) years:

    a. Dr. Sohi shall obey all federal, state and local laws, and all rules governing the practice of dentistry in Ohio.

    b. Dr. Sohi shall submit quarterly declarations

under penalty of Board disciplinary action stating whether or not there has been compliance with all of the provisions of probation.

c. Dr. Sohi shall appear in person for interviews before the full Board or its designated representative as requested by the Board.

d. Dr. Sohi must be accompanied by a staff member at all times while examining and treating patients

e. If Dr. Sohi violates the terms of this Order, the Board may, in its discretion, after giving notice and opportunity to be heard revoke his license to practice dentistry in the State of Ohio.

4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Sohi's license shall be fully restored.

This order shall become effective thirty (30) days from the date of mailing of the Order. In the interim, Dr. Sohi shall not undertake the care of any patient not already under his care.

Ohio Revised Code Section 119.12 may authorize an appeal from this Order. Such an appeal may be taken to the court of common pleas of the county where you reside, or where your business is located. If you are not a resident of and/or have no place of business in this state, you may appeal to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from the grounds of the appeal must be commenced by filing a notice of appeal with the Ohio State Dental Board and a copy with the court of common pleas within fifteen (15) days after the date of the mailing of this notice and in accordance with the requirements outlined in Ohio Revised Code Section 119.12.

/s/ Frank C. Williams, DDS

FRANK C. WILLIAMS, D.D.S.
Secretary

10/17/96
DATE

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PARNEET S. SOHI,	*	**Case No. A9605966**
D.D.S.	*	
Plaintiff-Appellant	*	
	*	**Judge Patrick T.**
vs.	*	**Dinkelacker**
	*	
OHIO STATE	*	**MAGISTRATE**
DENTAL BOARD	*	**DECISION**
Defendant-Appellee	*	

Court of Common Pleas
Hamilton Co., Ohio
Filed Jun 10, 1997
James Cissell, Clerk

RENDERED THIS 10TH DAY OF JUNE, 1997.

This matter is before the Court on an appeal from a decision of the Ohio State Dental Board.

BACKGROUND

Parneet S. Sohi, D.D.S., (Dr. Sohi) is a pediatric dentist licensed to practice in the state of Ohio.

On December 4, 1995, the Dental Board sent Dr. Sohi a Notice of Opportunity for Hearing, informing him that it intended "to determine whether or not to warn, reprimand, or otherwise discipline him for providing care that departs from or fails to conform, to accepted standards

for the profession, whether or not injury to a patient results, a violation of R.C. 4765.30 (A)(7)". The factual basis for the proposed disciplinary action was stated in Count 1 of the Notice, as follows:

> Between the dates of November 1994, and March 1995, you have mistreated and abused children in your practice by: grabbing them by the throat; placing anesthetic needle between the patient's eyes and threatening them; holding them up and shaking them; and placing children in headlocks, and other verbal and/or physical abuse against children.

By letter received by the Board on December 15, 1995, Dr. Sohi requested a hearing which was set for December 27, 1995. Pursuant to R. C. 119.90, the Board continued the hearing upon its own motion to July 18, 1996. Dr. Sohi was notified on January 22, 1996, that the hearing had been rescheduled.

On May 21, 1996, Dr. Sohi filed with the Board a Motion for a Bill of Particulars. he sought a list of the patients he had allegedly mistreated. On the same day, Dr. Sohi filed a Motion to Dismiss.

On May 24, 1996, Dr. Sohi filed a Complaint and Petition for Writ of Mandamus in the Franklin County Court of Appeals. The petition requested that the Board

provide the identities of children allegedly subjected to the misconduct and the dates of occurrence.

On June 10, 1996, Dr. Sohi filed a Motion for Continuance with the Board. The motion requested that the July 18, 1996 hearing be set for a new date. By letter dated June 18, 1996, the Board denied the request.

On June 25, 1996, Dr. Sohi filed a Request for a List of Witnesses.

On June 28, 1996, the Board contracted with Christopher B. McNeil (McNeil) to serve as Hearing Examiner at the hearing. On that same day, the Court of Appeals issued a Journal Entry denying Dr. Sohi's request to enjoin the July 18, 1996 hearing.

By Journal Entry dated July 8, 1996, Hearing Examiner McNeil denied the Motion for a Bill of Particulars. He granted in part and denied in part the request for a list of witnesses, noting that in R.C. 119 proceedings, it is beyond the authority of a hearing examiner to compel a prehearing exchange of witnesses and evidence since there is no provision for discovery in administrative proceedings. He specified that the need to have an actual document prior to the hearing could be raised in the prehearing telephone conference set for

July 10, 1996. Hearing Officer McNeil also denied Dr. Sohi's motions to bifurcate and for continuance.

July 18, 19, and 22, 1996, a hearing was held before Hearing Examiner McNeil. The Dental Board presented the testimony of Mary Elizabeth Morgan, Victoria Bartlett, and Kim Bradshaw. Each witness had worked for Dr. Sohi during the period in question. Each witness testified to having seen Dr. Sohi physically abuse and threaten several of his patients.

The Dental Board also called Stephen Wilson, D.D.S. to explain behavioral management techniques used in pediatric dentistry based upon the American Academy of Pediatric Dentistry guideline. Dr. Wilson acknowledged that sometimes a technique might be mistaken as mis-treatment of the child. However, he stated that even an acceptable behavioral management technique becomes inappropriate when used for the purpose of a threat.

Counsel for Dr. Sohi cross-examined all of the Board's witnesses and presented witnesses and exhibits on Dr. Sohi's own behalf. Dr. Sohi denied the allegations, but testified that he was familiar with the standards for behavioral management techniques since he had received training in those techniques.

On September 13, 1996, the Hearing Examiner filed his Report and Recommendation. He recommended that Dr. Sohi's license be permanently revoked. Dr. Sohi filed objections to the Report and Recommendation.

The Dental Board, after reviewing the transcript of the proceedings, the Report-and Recommendation, the objection and all the posthearing motions and pleadings, adopted the report of the Hearing Examiner, but modified the discipline recommended. Instead of a permanent revocation, the Board suspended Dr. Sohi's license for six months and conditioned his reinstatement upon its receipt of documentation that he had received a mental health evaluation and completed any treatment the evaluation revealed was necessary. The Board also imposed five years probation. One of the conditions of probation was that Dr. Sohi must be accompanied by a staff member at all times when examining and treating patients. The Board's Adjudication Order became effective thirty days after its October 17, 1996, issuance date.

On October 22, 1996, Dr. Sohi filed a Notice of Appeal with the Board pursuant to R.C. 119.12. On October 24, 1996, the Board received a second Notice of Appeal that had been filed with this Court.

On November 18, 1996, Judge Patrick T. Dinkelacker issued an Order and Entry suspending the

Board's Adjudication Order, pending the outcome of Dr. Sohi's R.C. 119.12 appeal. The Board's Adjudication of permanent license revocation was suspended upon the conditions that Dr. Sohi not render dental care unless an employee is present, and that he submit to the Court within thirty days a mental evaluation performed by a professional selected by the Court. By Order and Entry filed on January 6, 1997, the Court modified the condition upon which the suspension of the Adjudication Order was granted to only require Dr. Sohi to have an employee in the operatory when rendering dental care. Dr. Sohi is currently authorized to practice dentistry in the state of Ohio.

Dr. Sohi now appeals the Dental Board's Order.

DISCUSSION

In reviewing the Board's Order, this Court is required to apply the standard of review established by R.C. 119.12, which states:

> The Court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the Court has admitted, that the Order is supported by reliable, probative and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse,

vacate, or modify the order or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law.

As a result of this limited standard of review, the Ohio Supreme Court has held that a court of common pleas may not substitute its own judgment for that of the agency which issued the order. University of Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108.

A review of the record before the Hearing Officer reveals that Dr. Sohi was present at the hearing, and had ample opportunity to present evidence and testimony. The Hearing Officer allowed Dr. Sohi to cross-examine the Dental Board's witnesses the day after they were presented in order to give him time to prepare.

The Dental Board thoroughly considered all the evidence and testimony gathered by the Hearing Officer in reaching its decision to modify the discipline imposed by the Hearing Officer. The Board reduced the severity of the decision, reducing Dr. Sohi's permanent license revocation to a six month suspension with two conditions. It does not appear from the record that the decision of the Board was made arbitrarily.

Dr. Sohi claims that the testimony of the Dental Board's witnesses was refuted by the evidence presented by

him. However, it is the duty of the Hearing Officer to weigh credibility. An administrative agency should accord due deference to the findings and recommendation of its hearing officer, especially where there exists evidentiary conflict, because it is the hearing officer who is best able to observe the demeanor of the witnesses and weigh their credibility. Brown v. Ohio Bur. of Emp. Serv., 70 Ohio St. 3d 1, 635 N.E.2d 748.

Dr. Sohi also claims that the Board should not have used the standard promulgated by the American Academy of Pediatric Dentistry to determine the standard of care to which Dr. Sohi should be held. The Board's use of those standards was proper since Dr. Sohi was a member of the organization and admitted to being aware of the guidelines. This Court, when reviewing a medical Board's order, must accord due deference to the board's interpretation of the technical and ethical requirements of its profession. Pons v. Ohio State Med. Bd. 66 Ohio St. 3d 619,614 N.E. 2d 748.

After a review of the record, this court finds that the Board carefully reviewed the evidence before making its decision. This Court finds that the decision of the Board is based on reliable, probative, and substantial evidence.

DECISION

The decision of the Board is affirmed.

/s/ Richard A. Bernat
RICHARD A. BERNAT,
MAGISTRATE, COURT
OF COMMON PLEAS

Copies sent by Clerk of Courts to:

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Cincinnati, Ohio 45243-2673

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: _____

Deputy Clerk _____

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PARNEET S. SOHI, D.D.S.,	**:**	**Case No. A-9605966**
Appellant,	**:**	**(Judge Dinkelacker)**
vs.	**:**	
OHIO STATE DENTAL BOARD,	**:**	**DECISION REGARDING**
	:	**APPELLANT'S**
Appellee.		**OBJECTIONS TO**
	:	**THE MAGISTRATE'S DECISION/ENTRY**

This matter came before the Court pursuant to Appellant's (Parneet S. Sohi, D.D.S.) objections to Magistrate's Decision.

This Court has reviewed the submitted objections, memorandum, Magistrate's Decision and completed a full review of the record of the proceedings before the Ohio State Dental Board as certified to the Court.

Court of Common Pleas
Hamilton Co., Ohio
Entered Aug 26, 1997
Image

I. Magistrate's Decision Fails to use Proper Standard of Review and to Determine if Dental Board's Order is in Accordance With Law.

A review of the Magistrate's Decision as well as this Court's independent review of the submitted record indicates that the Magistrate used the proper standard of review.

On page 5 of the Magistrate's Decision, the Magistrate correctly quotes the proper standard of review as propounded in R. C. 119.12.

R.C. 119.12 states in pertinent part:

> "The Court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the Court has admitted, that the Order is supported by reliable, probative and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such order ruling as is supported by reliable, probative and substantial evidence and is in accordance with law." (Emphasis added).

The fact that the Magistrate correctly states the law is presumptive that the Magistrate applied that standard.

The mere omission of the phrase "in accordance with the law" by the Magistrate's decision is indicative of the fact that the Magistrate applied the proper standard.

Further, this Court's independent review of the submitted material indicates that the finding of the Dental Board is in accordance with the law.

Appellant's objection is overruled.

II. Magistrate's Decision Applies Incorrect Standard of Review as Based on Standard of "Arbitrariness".

Upon review of the submitted record and the Magistrate's Decision, this Court finds that the Magistrate applied the proper standard and that the Dental Board's order is supported by "...reliable, probative and substantial evidence".

This objection appears to be an argument of semantics and not of substance.

The statement by the Magistrate on page 6 of the decision, "It does not appear from the record that the decision of the Board was made arbitrarily," does not give

rise to Appellant's conclusion that the Magistrate used an arbitrary standard.

III. The Magistrate's Decision is in Error Even in Those Instances Where it Undertook a Review.

Appellant has consistently and vociferously asserted that the Dental Board did not have sufficient evidentiary basis to arrive at its findings. This Court disagrees.

The Magistrate correctly defers to the Dental Board's factual findings regarding credibility. This Court has reviewed the submitted records as has, it is presumed, so has the Magistrate. Absent some compelling piece of evidence, deference must be given to the Dental Board's assessment of credibility.

The Magistrate found. "Dr. Sohi claims that the testimony of the Dental Board's witnesses was refuted by the evidence presented by him." However, it is the duty of the hearing officer to weigh credibility.

Clearly, the Magistrate found the weight of the evidence (based upon credibility) to be supportive of the Dental Board's findings. This Court based upon its own review of the submitted evidence agrees.

IV. Ohio Dental Board Erred in Using Standards Promulgated by the American Academy of Pediatric Dentistry

The evidence clearly shows appellant was a member of the American Academy of Pediatric Dentistry (AAPD) and, presumably, aware of its standards.

Appellant's rights were not violated in any way by the Dental Board's use of the AAPD Guidelines.

The Court finds appellant's objection on this point to be baseless.

V. Magistrate's Decision Fails to Address and Resolve the Overwhelming Majority of Errors Assigned by Dr. Sohi.

The Court is concerned with one of the accusations leveled against the Magistrate regarding his decision. On page 11 of appellant's objections, footnote #7, appellant states: "Had the Magistrate reviewed the transcript, that conclusion could not have been made." If appellant has proof that the Magistrate has not performed the duties incumbent upon a judicial officer, then appellant should file whatever charges are appropriate. If appellant has no proof of dereliction of duty, then appellant should not cast such dispersions.

The mere fact that the Magistrate did not painstakingly, point by point, word by word, dissect and respond in kind to the voluminous writings of appellant does not mean the Magistrate did not review the proper material.

This Court has fully considered all of the multitude of claimed violations against the rights of the appellant, the multitude of claimed failures by the Dental Board regarding evidence and the multitude of claimed violations by the Magistrate.

This Court has conducted an independent review of all the pertinent evidence and pleadings allowable under Ohio Revised Code § 119.12.

The Court agrees with the Magistrate's decision that no errors were committed by the appellee which obligates this Court to overrule the Magistrate's decision or the appellee's decision.

Conclusion:

In conclusion,

Parneet S. Sohi, D.D.S. was provided with a full and fair hearing with appropriate consideration for his due process rights by the Ohio State Dental Board.

Ohio Revise Code §119.12 is constitutionally sound, appellant's argument to the contrary.

No claim of error propounded by appellant is found to be well taken.

Therefore, appellant's objections to Magistrate's decision are all overruled.

Finally, after a thorough and independent review of the proceedings before the Ohio State Dental Board, the Court finds the Board's decision was based on reliable, probative and substantial evidence, in full accordance with the law including O.R.C. §119.12 and not in dereliction of any appellant's constitutional rights.

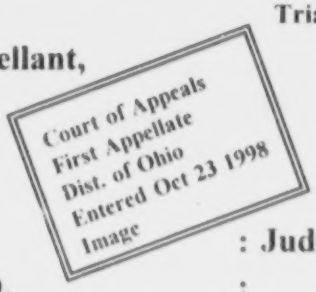
IT IS SO ORDERED.

/s/ Dickelacker, Jr.
Judge Patrick Dickelacker

8-26-97
Date

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PARNEET S. SOHI, D.D.S.,	:	**Appeal No.C-970739**
		Trial No. A-9605966
Appellant,		
vs.		
OHIO STATE	:	**Judgment Entry**
DENTAL BOARD,	:	
Appellee.	:	



This cause having been heard upon the appeal, the record and briefs filed herein and arguments, and

Upon consideration thereof, this Court Orders that the judgement of the trial court is affirmed in part, reversed in part and the cause is remanded with instructions for the reasons set forth in the Opinion filed herein and made a part hereof.

Further, the Court holds that there were reasonable grounds for this appeal, allows no penalty and Orders that costs are to be taxed in compliance with App. R. 24.

The Court further Orders that 1) a copy of this Judgement with a copy of the Opinion attached constitutes The mandate, and 2) the mandate be sent to the trial court

for execution pursuant to App. R. 27.

To The Clerk:

Enter upon the Journal of the Court on 10/23/98 per order of the Court.

By: /2/ SH
Presiding Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PARNEET S. SOHI, D.D.S.,	**: Case No. A-9605966**
	Trial No. A-9605966
Appellant,	**:**
vs.	**:**
OHIO STATE DENTAL BOARD,	**: OPINION**
Appellee.	**:**

Civil Appeal From: Hamilton County Court of Common Pleas Judgment Appealed From Is: Affirmed in Part, Vacated in Part, and Cause Remanded.
Date of Judgment Entry on Appeal: October 23,1998

Vorys, Sater, Seymour and Pease LLP, Paul Coval, and Gregory D. Russell, and Frank R. Recker & Assoc. Co., LPA, Frank R. Recker, and Katrina L. Trimble Coffaro, for Appellant,

Betty D. Montgomery, Ohio Attorney General, and Sallie J. Debolt, Assistant Attorney General, for Appellee.
Marianna Brown Bettman, Judge.

PROCEDURAL POSTURE

This is an appeal brought by Partneet S. Sohi, a pediatric dentist, from the order of the court of common pleas affirming the decision of the Ohio State Dental Board (Dental Board) suspending his license to practice dentistry for six months. In this appeal, Dr. Sohi argues that the Dental Board's proceedings against him lacked the requisite due process. To understand and decide his assignments of error, we must review the background leading to the charges and the evidence adduced at the administrative hearing.

BACKGROUND LEADING TO CHARGES

During the spring of 1995, Victoria Bartlett, who as then the office manager at Dr. Sohi's dental practice, called the Dental Board to complain about the way Dr. Sohi was treating his patients. This call started the investigation of Dr. Sohi.[1] Bartlett and two co-workers, Mary Morgan

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[1] R.C. 4715.03 vests the Ohio State Dental Board with the power to administer and enforce the provisions of R.C. Chapter 4715, which addresses the licensing of dentists and hygienists. Specifically, "the board shall investigate evidence which appears to show that any person has violated any provision of this chapter. Any person may report to the board under oath any information such person may have appearing to show a violation of any provisions of this chapter.*** If after the investigation the board determines that there are reasonable grounds to believe that a violation of this chapter has occurred, the board shall conduct disciplinary proceedings pursuant to Chapter 119,

and Kim Bradshaw, gave sworn statements to a Dental Board investigator, alleging patient mistreatment by Dr. Sohi. Bradshaw and Morgan were dental assistants to Dr. Sohi.[2]

Bartlett's eight-page statement described Dr. Sohi applying heavy pressure with his hands over the mouth and nose of children to silence them, placing children in headlocks, choking children, applying a nitrous mask over children's faces so that it left an indentation, threatening children with needles and telling them "to shut up if they ever want to see mommy again." Bradshaw made allegations in her statement similar to those by Bartlett. Neither Bartlett's statement of Bradshaw's statement contained any patient names. Morgan's statements did include two patient names. Because the allegations at issue involve child victims, we will refer to these patients as patient 1 and patient 2. Morgan specifically alleged that Dr. Sohi held patient 1 against the wall and shook him. Morgan alleged that Dr. Sohi allowed splattered blood to remain on the file of patient 2. This second allegation does not concern patient treatment and was not a part of the disciplinary proceedings.

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of the Revised Code."

[2] Bradshaw worked in Dr. Sohi's office from November 1994 to January 1995; Morgan from January 1995 to March 1995.

As part of its investigation, the Dental Board also hired Stephen Wilson, D.D.S., to examine the statements of Bartlett and Bradshaw and to render a professional opinion on whether Dr. Sohi's reported behavior-management techniques departed from the accepted standards of the profession. Dr. Wilson found numerous departures.

R.C. 4715.30(A) sets outs the board's statutory bases for instituting disciplinary proceedings against a dentist. Under R.C. 4715.30(A)(7), the board can discipline a dentist for providing dental care that departs from the accepted standards for the profession even if no patient is injured. Based upon its investigation, the board instituted a formal disciplinary action against Dr. Sohi pursuant to R.C. 4715.30(A)(7).

There is no other information, about the board's investigation in this record. Additionally, no investigator testified at the administrative hearing.

NOTICE OF DISCIPLINARY ACTION

On December 4, 1995, the board notified Dr. Sohi that it proposed to take disciplinary action against him involving his license to practice dentistry in Ohio. The board based its proposed action upon allegations that between November 1994 and March 1995 Dr. Sohi departed from the accepted standards of the profession by mistreating and abusing the his young patients. The notice of

opportunity for hearing reads as follows:

> In accordance with Chapter 119, and Chapter 4715, of the Ohio Revised Code, you are hereby notified that the Ohio State Dental Board intends to determine whether or not to warn, reprimand or otherwise discipline you or to suspend or revoke your license to practice dentistry in Ohio for one or more of the following reasons.
>
> COUNT 1
>
> Between the dates of November, 1994, and March, 1995, you have mistreated and abused children in your practice by: grabbing them by the throat and choking; placing anesthetic needle between the patient's eyes and threatening them; holding them up and shaking them; and placing the children in headlocks, and other verbal and/or physical abuse against children.
>
> Such conduct constitutes a violation of Section 4715.30(A) of the Ohio Revised Code, which states in relevant part: "The holder of a certificate or license issued under this chapter is subject to disciplinary action by the state dental board for any of the following reasons: *** (7) Providing care that departs from or fails to conform to accepted

> standards for the profession, whether or not injury to a patient results.
>
> Pursuant to Chapter 119, Of the Ohio Revised Code, you are advised that you are entitled to a hearing on this matter. * * *

Dr. Sohi requested a hearing and demanded more information about the charges, particularly patient names and exact dates of the alleged incidents. In February of 1996, he was provided with the sworn statements of Bartlett, Morgan, and Bradshaw that were taken as part of the board's investigation. Morgan's statement included the names of patient 1 and patient 2.

After Dr. Sohi received the statements of Bartlett, Bradshaw, and Morgan, he continually tried to learn the names of the other patients he allegedly had mistreated. Although Dr. Sohi provided the board with access to his files, from the record before us, it appears that the board never determined the names of the other patients before the hearing.

HEARING

The Dental Board hired Christopher B. McNeil to serve as the hearing examiner. A hearing was held on July 18, 19, and 22, 1996. The hearing examiner ordered that both sides exchange witness and exhibit lists at least one week before the hearing.

The state did not present the testimony of any patient victims or their parents. Bartlett, Bradshaw, and Morgan testified to the misconduct they witnessed. For the first time, Bartlett identified the names of three other patient victims. They were referred to as patient 3, patient 4, and patient 5. Dr. Wilson also testified as an expert. Although Dr. Wilson did testify that, to those not trained in pediatric dentistry , acceptable behavioral-management techniques can appear shocking or harmful, he did find numerous departures from the acceptable practice by Dr. Sohi.

After hearing all the evidence, McNeil found that Dr. Sohi had mistreated and abused his patients. McNeil issued findings of fact and conclusions of law that separated Dr. Sohi's conduct into four categories. Specifically, he held that Dr. Sohi mistreated and abused his patients by (1) placing hypodermic needles between the eyes of the patients and threatening them, and telling them to "shut up," in conjunction with either the unacceptable behavior the child's parent would be able to return to the room; (2) applying the hand-over-mouth technique in such a way as to deliberately prevent the child from breathing; (3) grabbing patients by the throat and choking them, placing them in headlocks, and restraining them with the use of his forearm under the children's throats, choking them; and (4) holding patient 1 up against the wall of the operatory and shaking him. McNeil found these cited examples of misconduct inconsistent with the acceptable standards of the

profession of dentistry in Ohio and in violation of R.C. 4715.30(A)(7). Additionally, he found each of the four enumerated findings of misconduct standing alone sufficient to warrant revocation of Dr. Sohi's license to practice dentistry. Dr. Sohi filed objections to the report and recommendation.

REVIEW BY FULL DENTAL BOARD

The Dental Board, after reviewing the transcript of the proceedings, the report and recommendation of the hearing examiner, Dr. Sohi's objections and all the post-hearing motions and pleadings, adopted the report of the hearing examiner in full, but modified the discipline recommended. Instead of a permanent license revocation, the board suspended Dr. Sohi's license for six months and conditioned his reinstatement upon its receipt of documentation that he had received a mental-health evaluation and any treatment the evaluator deemed necessary. The board also placed Dr. Sohi on probation for five years, and made it a condition of probation that Dr. Sohi be accompanied by a staff member at all times when examining a patients. The board's order was to become effective thirty days after its October 17, 1996, issuance date.

APPEAL TO COMMON PLEAS COURT

Pursuant to R.C. 119.12, Dr. Sohi appealed from the Dental Board's order to the court of common pleas, and requested a stay of the board's order. The court of

common pleas stayed the order of the board and ordered Dr. Sohi to refrain from rendering dental care during the stay without an employee present with him in the operatory.

After a review of the record, the trial court affirmed the order of the board. From that judgment, Dr. Sohi has filed this appeal.

STANDARD OF REVIEW IN ADMINISTRATIVE APPEALS

In an administrative appeal under R.C. 119.12, a trial court must determine whether the decision of the administrative board is supported by reliable, probative and substantial evidence.[3] The trial court must give due deference to the administrative resolution of evidentiary conflicts and must not substitute its judgment for that of the administrative board or agency.[4] Appellate review is limited to determining whether the trial court abused its discretion in finding the board's decision supported by

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[3] R.C. 119.12; *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St. 3d 570, 571, 589 N.E. 2d 1303, 1305

[4] *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111, 407 N.E. 2d 1265, 1267.

reliable, probative and substantial evidence.[5] Issues of law are reviewed de novo.[6]

PRESENT APPEAL
DUE PROCESS ARGUMENTS

Dr. Sohi alleges five assignments of error in this appeal. The first two assignments of error involve the following:

> First Assignment of Error: The trial court erred in finding that the Dental Board had provided to Dr. Sohi a meaningful pre-hearing notice of the charges to be heard at the scheduled disciplinary hearing as required by due process.
>
> Second Assignment of Error: The trial court erred by finding that due process permitted the Dental board to sanction Dr. Sohi for instances of alleged mistreatment of patients never identified by the Dental Board.

These assignments of error address what process is due to a respondent in an administrative proceeding

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[5] *Pons v. Ohio State Medical Bd.* (1993), 66 Ohio St. 3d 619, 621, 614 N.E. 2d 748, 750-751.

[6] *Univ of Cincinnati College of Medicine v. State Empl. Relations Bd.* (1992), 63 Ohio St. 3d 339, 343-344, 587 N.E. 2d 835, 838-839.

involving a professional license. They are somewhat interrelated, and we address them at the same time. As they present questions of law, we review them de novo.

In his first assignment of error, Dr. Sohi argues that the trial court erred in finding that the Dental Board provided him meaningful prehearing notice of the charges against him. In his second assignment of error, Dr. Sohi argues that the trial court erred in finding that he was sanctioned in accordance with due process when he was in fact sanctioned for mistreatment of patients not identified.

An administrative agency such as the Dental Board cannot revoke or suspend a professional license without safeguarding the statutory and due process rights of the respondent. Pursuant to R. C. 119.07, the Dental board was required to provide Dr. Sohi with sufficient notice of the charges against him to allow preparation of a defense to the charges. [7] In addition, to the extent that the administrative hearing involved the deprivation of property (the revocation or suspension of a professional license),[8] the Due Process

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[7] *Garoc v. ohio Veterinary Medical Bd.* (1987), 37 Ohio App.3d 192, 199, 525 N.E.2d 501, 507; *Keaton v. Dept. of Commerce* (1981), 2 Ohio App.3d 480, 442 N.E. 2d 1315.

[8] *Schware v. Bd of Bar Examiners* (1957), 353 U.S. 232, 238-239, 77 S.Ct. 752, 756 (holding that a professional's license is protected property interest).

Clauses of the Ohio and U.S. Constitutions are implicated, requiring that Dr. Sohi be given "notice and opportunity for hearing appropriate to the nature of the case."[9] Procedural due process also embodies the concept of fundamental fairness.

In this case, the board's notice advised Dr. Sohi that the charge against him was "[p]roviding care that departs from or fails to conform to accepted standards for the profession, whether or not injury to a patient results." The notice stated in further detail that, between certain specified dates, he mistreated and abused children in his practice, and the notice provided specific detail about the nature of the mistreatment and abuse. However, despite all of Dr. Sohi's requests for the names of the patients involved, he was only given the names of two patients prior to the hearing. They were contained in the witness statement of Mary Morgan and were referred to at the hearing as patient 1 and patient 2. At the hearing itself, but not before, Bartlett identified the names of three more mistreated patients.

The board prosecuted and sanctioned Dr. Sohi for misconduct against patients never identified by name to Dr. Sohi before the hearing. To this extent, Dr. Sohi's procedural due process rights were violated, as Dr. Sohi,

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[9] Mullane v. Central Hamover Bank & Trust Co. (1950), 339 U.S. 306, 313, 70 S.Ct. 652, 656-657.

who saw approximately 1500 patients during the period in question, was effectively denied the ability to present a defense without this crucial information.[10]

This holding is supported by the board's own protocol. In every other dental disciplinary case before the board involving patient care, the board had provided the names of the accusing patients in the notice to the dentist under review.[11] However, as mentioned above, Dr. Sohi was only given the names of patient 1 and patient 2 prior to

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[10] *See State ex, rel. Sohl v. Ohio State Dental Board* (Oct. 24, 1996), Franklin App. No. 96APD05-687, unreported (denying the board's motion to dismiss Dr. Sohi's mandamus action seeking a writ to compel the board to reveal specific information about the identity of the children allegedly mistreated by Dr. Sohi and the alleged dates of mistreatment. The writ was eventually denied, based upon the fact that the disciplinary hearing had already occurred and Dr. Sohi had an adequate remedy at law - this direct appeal. *State ex, rel. Sohgi v. Ohio State Dental Board* (May 20, 1997); Franklin App. No. 96APD05-687, unreported, affirmed [1997], 80 Ohio St.3d 492, 687 N.E.2d 454). See, also, *In re Morgtenstern* (May 28, 1992), Franklin App. No. 91A-1018, unreported (trial court abused its discretion in affirming the Chiropractic Board's order upon facts for which Morgenstern was not given fair notice before the hearing).

[11] This information was obtained by Dr. Sohi's counsel and made a part of the record.

the hearing. Although the allegations concerning patient 2 were ultimately not pursued by the state, Dr. Sohi did have enough information about these two patients in advance of the hearing so that his due process rights as to these patients were not violated.

Because the board's proceedings against Dr. Sohi with respect to patient 1 met the requirements of due process, the statutory violation based upon Dr. Sohi's misconduct towards patient 1 is upheld. The findings of disciplinary violations related to other patients are vacated because of the due process violations. Thus, the first and second assignments of error are sustained in part.

OTHER ASSIGNMENTS OF ERROR

In his third assignment of error, Dr. Sohi argues that the trial court abused its discretion in affirming the board's decision when it was not supported by sufficient, credible evidence. Because of our disposition of the first two assignment of error, we limit our review of this assignment of error to the findings pertinent to patient 1.

The board found that Dr. Sohi held patient 1 against the wall of the operatory and shook him. This finding was based upon the testimony of Mary Morgan and Victoria Bartlett. Morgan testified at the hearing that she walked into the operatory and found Dr. Sohi holding a young boy against the wall and shaking him. She immediately left the

room and told Bartlett, who was working at the reception desk, what she had seen. She identified this patient as patient 1 (Dr. Sohi did have his name before the hearing) and testified that the boy's father was in the dentist's office but not in the operatory when the misconduct occurred.

Bartlett testified that she heard a child's scream followed by a thud coming from the operatory. As she got up to investigate, she ran into Morgan, who appeared to be very upset. Morgan told her that Dr. Sohi had patient 1 up against the wall. Bartlett testified also that the boy's father was in the dentist's office, but not present in the operatory with his child.

Dr. Sohi argues that Morgan's and Bartlett's testimony was not credible in light of an affidavit he submitted from the parents of patient 1. They averred that at least one of them was with their son during the entirety of each visit to Dr. Sohi's office, and that no mistreatment occurred during these visits. If we assume that this affidavit was considered,[12] the trial court must give due deference to the findings of the board with respect to conflicting testimony, and may not substitute its own

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[12] The hearing examiner refused to admit the affidavit into evidence, but, according to Dr. Sohi, the board considered this affidavit in its review of the proceedings as reflected in the board's minutes.

judgment for the credibility determinations made by the board.[13] Simply put, our conclusion is that the hearing examiner and the board apparently believed Dr. Sohi's employees on this point.

The trial court did not abuse its discretion in finding the board's decision with regard to patient 1 to be supported by reliable, probative, and substantial evidence. Finding no abuse of discretion, we overrule the third assignment of error, limited to patient 1.[14]

In his fourth assignment of error, Dr. Sohi argues that the Dental Board had no authority to impose sanctions based upon alleged violations of guidelines promulgated by the American Academy of Pediatric Dentistry, We disagree.

The board is statutorily authorized to oversee the licensure of the dental profession in the State of Ohio, including the imposition of sanctions for behavior that departs from the accepted standards of the profession. As indicted before, the board can discipline a dentist for providing dental care that departs from the accepted standards of the profession even if no patient is injured.

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[13] *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 687-688, 590 N.E.2d 1223,1226; *Conrad, supra* at 111, 407 N.E.2d at 1267.

[14] *Pons, supra*

Therefore, the AAPD guidelines are strong evidence and highly probative of the accepted standards of the profession, and of what constitutes a departure form the standards and a potential statutory violation. While the board did not rely solely on the AAPD guidelines in finding Dr. Sohi's behavior with regard to patient 1 inconsistent with the acceptable standards of the profession of dentistry, it was certainly not error to consider them. The fourth assignment of error is overruled.

In his final assignment of error, Dr. Sohi argues that trial court should have vacated the board's order because the board had a financial incentive to impose sanctions against Dr. Sohi.

Dr. Sohi bases his argument on R.C. 119.092, which allows certain prevailing parties in administrative hearings to request attorney fees. Under this stature, had Dr. Sohi been a prevailing party after the adjudicatory hearing, he could have filed a motion for the payment of attorney fees related to his defense at the hearing. The Stature provides that "the request for the award shall be reviewed by the referee or examiner who conducted the adjudication hearing or, if none, by the agency involved.

Dr. Sohi argues that this statute gives the board a financial interest in the outcome of any disciplinary proceeding so that it will always find against the

respondent. This argument fails. Where there is an independent hearing examiner, it is the examiner, not the board, who makes any decision about attorney fees, and the decision is not reviewable by the board R.C. 119.092. Further, a prevailing party does not automatically receive attorney fees. If the board establishes that its position in initiating the matter in controversy was substantially justified, the hearing examiner can decline to award attorney fees to a prevailing party. R.C. 119.092(B)(2)(a).

Accordingly, the board had no financial incentive to impose sanctions. The fifth assignment of error is overruled.

DISPOSITION OF APPEAL

The allegations raised against Dr. Sohi which initiated this investigation are both serious and troubling, and all the more so because children are involved. It is regrettable that no investigator testified at the hearing and that no explanation was provided for the failure to provide all the victims' names prior to the completion of the investigatory process.[15] What we have said in this appeal is that we agree with the trial court and the board that Dr.

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[15] *Compare Gureasko v. Bethesda Hosp.* (1996), 116 Ohio App.3d 724, 689 N.E.2d 76.

Sohi's misconduct toward patient 1, standing alone, was sufficient to warrant disciplinary action in this matter, and that Dr. Sohi suffered no due process violation in regard to this patient. We also agree that, based solely on the conduct involving patient 1, the other conditions placed on Dr. Sohi are appropriate. However, we have also sustained Dr. Sohi's due process arguments in part. With respect to the findings of statutory violations, therefore, we affirm the judgment of the trial court in part and reverse it in part. Because we are unable to determine whether the board intended the misconduct towards patient 1, standing alone, to warrant the six-month suspension and related counseling requirements, or whether that punishment was based on Dr. Sohi's treatment of unidentified patients as well as patient 1, we remand the case to the board, via the trial court, for clarification of the sanctions appropriate for the misconduct towards patient 1 only, and for any further proceedings comporting with this opinion.

Judgment accordingly.

SUNDERMANN, P.J., and **PAINTER,J.**, concur.

Please Note:

The court has placed of record its own entry in this case on the date of the release of this Opinion.

THE SUPREME COURT OF OHIO

Parneet S. Sohi, D.D.S,	:	**1999 TERM**
Appellant,	:	**Case No. 98-2573**
v.	:	**ENTRY**
Ohio State Dental Board,	:	
Appellee,	:	

The Supreme Court of Ohio
filed Mar 23 1999
Mengel, Clerk

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Vorys, Sater, Seymour & Pease L.L.P.

(Hamilton County Court of Appeals; No C970739)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

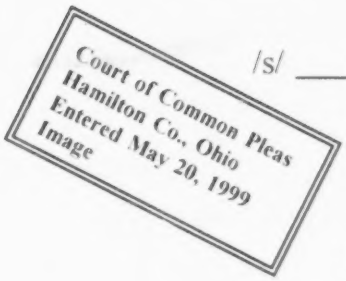
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

PARNEET S. SOHI,		
D.D.S.	:	**Appeal No. C-970739**
Appellant	:	**Trial No. A-9605966**
vs.	:	**(Judge Dinkelacker)**
OHIO STATE		
DENTAL BOARD	:	**ORDER**
Appellee	:	

Upon consideration of the decision of the First Appellate District of Ohio in the above captioned case, the Court orders the Ohio State Dental Board to determine appropriate sanctions for the misconduct of appellant toward patient 1 only.

The matter is hereby remanded to the Ohio State Dental Board for compliance with this order.

IT IS SO ORDERED.



/s/ Dinkelacker, Jr.
Judge Patrick T. Dinkelacker

5-20-99
Date